



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 23, 2003

Ms. Michele Austin  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2003-4273

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183176.

The City of Houston Police Department (the "department") received a request for "all records held by the Houston Police Department pertaining to surveillance of political, social and religious organizations, for the period 2000 to present," as well as "the current standards and guidelines for intelligence gathering of political, social or religious groups and any changes in those standards and guidelines which have occurred since 2000." You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by addressing your argument under section 552.108 of the Government Code. Section 552.108 provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime.

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution.

....

Generally, a governmental body claiming section 552.108(a)(1) or (b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You contend that Exhibits 2, 3, 4, and 5 relate to "open and active criminal investigations." Based upon this representation, we conclude that the release of Exhibits 2, 3, 4, and 5 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold Exhibits 2, 3, 4, and 5 under section 552.108(a)(1) of the Government Code.<sup>1</sup>

You also contend that Exhibit 6 is excepted from disclosure under section 552.108(a)(1) and (b)(1). You contend that Exhibit 6 reveals the department's law enforcement techniques, the release of which could compromise future operations and investigations. You have submitted an affidavit from a captain for the department in support of this argument. This office has previously found that a governmental body may withhold information that would reveal law enforcement techniques when the governmental body demonstrates that revealing the techniques would interfere with law enforcement or prosecution efforts. *See, e.g.,* Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Based on our review

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<sup>1</sup>Based on this finding, we need not reach your arguments under sections 552.101 and 552.130 of the Government Code.

of your arguments and the submitted information, we find that you have not adequately demonstrated how release of the information in Exhibit 6 would interfere with law enforcement or prosecution efforts. Therefore, while the department may withhold Exhibits 2, 3, 4, and 5 under section 552.108 of the Government Code, it must release Exhibit 6 in full.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

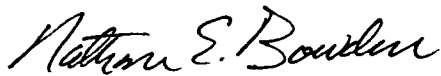
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Nathan E. Bowden".

Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 183176

Enc: Submitted documents

c: Ms. Martha Mendoza  
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(w/o enclosures)